IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No. 4534 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE J.R.VORA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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RAJESH @ RAJU PRAVINCHANDRA SONI

Versus

STATE OF GUJARAT

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Appearance :

MR YOGESH S LAKHANI for Applicant

MR KC SHAH APP for Respondent

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CORAM : HONOURABLE MR.JUSTICE J.R.VORA

Date : 06/02/2006

ORAL JUDGMENT

1. This Criminal Misc. Application is preferred by the convict – prisoner for directing that various sentences of imprisonment inflicted upon him in Criminal Cases No.2958/2003, 2959/2003, 2960/2003, 2961/2003, 2962/2003, 2963/2003, 2964/2003 and 2965/2003 by the learned Judicial Magistrate, First Class, at Rajkot, to run concurrently in all above eight cases.

2. The present applicant was charge-sheeted in above said eight cases for the offences punishable under Sections 420, 467, 468, 471 and 120-B of the Indian Penal Code. In each case, the present applicant was convicted and sentenced to undergo simple imprisonment of 18 months and to pay a fine of Rs.1,000/- for the offence punishable under Section 420 of the Indian Penal

Code, was convicted and sentenced to undergo simple imprisonment of 24 months and to pay a fine of Rs.1,000/- for the offence punishable under Section 467 of the Indian Penal Code, was convicted and sentenced to undergo simple imprisonment of 20 months and to pay a fine of Rs.1,000/- for the offence punishable under Section 468 of the Indian Penal Code, was convicted and sentenced to undergo simple imprisonment of 12 months and to pay a fine of Rs.500/- for the offence punishable under Section 471 of the Indian Penal Code and was convicted and sentenced to undergo simple imprisonment of 06 months and to pay a fine of Rs.500/- for the offence punishable under Section 120-B of the Indian Penal Code. In each of the case, the learned Judicial Magistrate, First Class awarded benefit of set of and in each case, it was directed that sentences for different offences in same trial shall run concurrently. In each of the above said eight cases, the judgment was

pronounced on 5th November, 2004.

3. Now this Criminal Misc. Application under Section 482 of the Criminal Procedure Code is filed for the relief as aforesaid that sentences of imprisonment awarded in each of above eight criminal cases should run concurrently in all the above eight cases.

4. In all the eight cases, it was alleged that on different occasions and at different time, the present applicant along with other accused in conspiracy committed theft in respect of separate and different vehicles and made changes in engine number, registration book of such vehicles etc. The applicant, in all the above eight cases, pleaded guilty and hence, the above said convictions and sentences.

5. Though it appears that the applicant had preferred eight Criminal Revision Applications against the order of Judicial Magistrate, First

Class for the very purpose of directing to run sentences concurrently inflicted upon him in separate cases, but the same was dismissed by the learned Sessions Judge, Rajkot as the same was not maintainable.

6. Learned senior counsel Mr.Y.S.Lakhani for the applicant submitted that in absence of direction issued by the learned Judicial Magistrate, First Class in each of the above said eight cases, the Jail Superintendent calculates the period of sentences to run consecutively i.e. one after another. It is submitted that under Section 427 of the Criminal Procedure Code, discretion is vested in the learned Judicial Magistrate, First Class to be exercised in proper cases and to direct the sentences awarded in different and separate cases to run concurrently and such direction is not given and, therefore, the Jail Authority calculates the sentences awarded to the present applicant to run consecutively. Reading

Section 427 of the Criminal Procedure Code, the learned senior counsel for the applicant stated that, it is only through the provisions of Section 427 of the Criminal Procedure Code, it can be said that the sentences shall run one after the other, if direction to run sentences in different cases, concurrently is not given. Learned senior counsel for the applicant appears to focus on the exercise of powers by this Court under Section 482 of the Criminal Procedure Code by submitting that when the discretion is not exercised by the Judicial Magistrate, the sentences awarded in separate cases would run consecutively and that such an accused is entitled to pray for to invoke inherent powers of this Court. It is further submitted that the co-accused of the same Criminal Cases, however, was given the benefit of Section 427 of the Criminal Procedure Code by the learned Judicial Magistrate, First Class vide orders passed by the learned Judicial Magistrate, First Class, Rajkot

on 9th April, 2004. My attention was also drawn to the copy of the said judgment as placed at page-50 of the compilation. Though it is made clear that judgment and order, in Criminal Case No.10000/2002 in respect of the co-accused Atul Mulshankar Dalal came to be passed by some other Judicial Magistrate, First Class and not by the Judicial Magistrate, First Class who passed the orders impugned in this Criminal Misc. Application. Learned senior counsel for the applicant placed reliance on many decisions of various High Courts wherein exercising of powers under Section 482, the High Courts directed sentences to run concurrently in separate cases and these cases are -

[1] Cruz Fernandes Vs. The State, as reported in 1970 Cri.L.J. 96, (the decision of Hon'ble High Court, Goa, Daman & Diu J. C.'s Court).

[2] Mullapudi Venkanna Vs. The State of Andhra Pradesh, as reported in AIR 1964 Andhra Pradesh 449.

[3] Baijnath Jumi and another Vs. The State, as reported in AIR 1961 Patna 138.

[4] A. S. Naidu Vs. The State of Madhya Pradesh, as reported in 1975 Cri.L.J. 498, (a decision of Hon'ble High Court of Kerala.

[5] Sooraj Vs. The State, as reported in 1994 Cri.L.J., 1155 (a decision of Hon'ble High Court of Kerala).

[6] Jadu alias Jadua Bhoi Vs. State of Orissa, as reported in 1992 Cri.L.J. 2117 (a decision of the Hon'ble High Court of Orissa).

[7] Mani and another Vs. State of Kerala, as reported 1983 Cril.L.J., 1262 (a decision of the Hon'ble High Court of Kerala).

Learned senior counsel for the applicant also relied upon the decision of the Apex Court, in the matter of **Central Bureau of Investigation Vs. Akhilesh Singh**, as reported in **AIR 2005 S.C. 268** wherein the Apex Court observed that the main accused of the case who had alleged to have hatched conspiracy and who had motive to kill

deceased was already discharged and the said matter had attained finality, the High Court was correct to exercise powers under Section 482 of Criminal Procedure Code to discharge other co-accused. It appears that these decisions are cited by learned senior counsel for the purpose that the High Court can direct sentences awarded in separate and in different cases to run concurrently within the meaning of Section 427 of Criminal Procedure Code. It is submitted that the accused – applicant was arrested on the same day in all the eight cases. The judgment of convictions and sentences were pronounced on the same day and, therefore, it is submitted that as soon as the judgment in first case is pronounced, it becomes a judgment of convictions and judgment of sentences in previous cases for other remaining cases and the provisions of Section 427 directly is attracted as has been argued by him. It is submitted that the predecessor of learned Judicial Magistrate, First Class considering the

grounds of other co-accused gave benefit of Section 427 to that accused then the Judicial Magistrate, First Class who pronounced the judgment in above said eight cases ought to have exercised discretion under Section 427 to direct sentences to run concurrently. It is submitted that the applicant had pleaded such grounds. It is submitted that except surrendering to the jurisdiction of this Court under Section 482 of the Criminal Procedure Code, there is no other remedy available to the present applicant to cure injustice. In sum and substance, learned senior counsel for the applicant submitted that this is a fit case to exercise powers under Section 427 of the Criminal Procedure Code and that the said powers can be exercised by the High Court under Section 482 of the Criminal Procedure Code for which the above said decisions are relied upon. It is submitted that therefore, the application be allowed and direction under Section 427 be issued to run sentences in above said eight

cases, concurrently.

7. On the other hand, learned APP Mr.K.C.Shah for the respondent – State of Gujarat contended that in terms the applicant seeks relief in respect of extent and legality of sentences awarded to the present applicant. It is submitted that in pursuance of Section 375 of Criminal Procedure Code, an appeal is provided for in such circumstances. It is submitted that when such appeal is provided for, question of considering this issue within the scope of powers vested in this Court under Section 482 of the Criminal Procedure Code, would not arise at all. It is submitted that these are the exceptional powers and only to give effect to any order passed under this Code, or to prevent abuse of the process of law and to secure the ends of justice where grave injustice is done, the powers under Section 482 of the Criminal Procedure Code should be exercised. It is submitted that such extra-

ordinary powers should be exercised very sparingly and not in the cases like on hand where the applicant is convicted in eight cases for the grave offences under Sections 420, 468, 471 of the Indian Penal Code for which the applicant has been, on his pleading guilty, leniently sentenced. It is submitted that otherwise also, having regard to the facts of the cases, the learned Judicial Magistrate thought it fit not to exercise discretion under Section 427 of the Criminal Procedure Code and the decision of the learned Judicial Magistrate should not be interfered with. It is submitted that therefore, this application deserves to be dismissed.

8. Having heard learned counsels for the parties, two issues arise for consideration are [1] Whether this Court has jurisdiction to entertain the relief sought; and [2] Whether the learned Judicial Magistrate to meet the ends of justice, was required to exercise discretion

under Section 427 of the Criminal Procedure Code.

9. So far as first issue is concerned, true it is that the powers vested in the High Court by virtue of Section 482 of the Criminal Procedure Code are solemn and must be, sparingly, exercised to the extent of doing justice where grave injustice is caused and where it is necessary to intervene to secure the ends of justice. It must be noted here that even in exercise of inherent powers, this Court cannot go beyond the provisions of law, so as to modify the statute. It is only when there is no provisions to implement a just order enabling provisions to exercise of powers under Section 482 is enacted. The powers can be used and exercised for promotion of justice and for advancing of cause of justice. In the matter of **State Through Special Cell, New Delhi Vs. Navjot Sandhu alias Afshan Guru and Others**, as reported in **(2003) 6 S.C.C. 641**, the Apex Court clearly sounded a note

of caution that powers under Section 482 cannot be exercised to override the provisions of Criminal Procedure Code.

10. Having regard to the facts of the present case, the issue whether learned Judicial Magistrate, First Class ought to have exercised discretion under Section 427 of the Criminal Procedure Code, can be examined and considered within the scope of powers under Section 482 to the extent to ascertaining that any miscarriage of justice has been occasioned or the orders complained of are so perverse that if allowed to stand, would defeat the ends of justice. Within this parameter the present issue is required to be examined under inherent powers of this Court vested by provisions of Section 482 of Criminal Procedure Code.

11. So far as the next issue is concerned, it first be examined, whether in the present set of

facts, Section 427 would be attracted. The submission made by the learned senior counsel for the applicant that whether the sentences shall run consecutively can only be ascertained with reference to section 427 of the Criminal Procedure Code, cannot be accepted for the simple reason that ordinarily when a person is convicted and sentenced for separate cases, he must be served with such unit of punishment, separately. This is logical, fundamental, principle of criminal justice system, but for the benefit of the accused and in my humble view to strengthen re-formative theory of penalogy, a salutary provisions by way of exception to the general rule is engraved in Criminal Procedure Code in shape of Section 427 of the Criminal Procedure Code which enables the Courts to deviate from fundamental and general rule of theory of punishment and direct concurrently running of sentences, even though sentences might have been inflicted on separate and distinct criminal

cases. The provision of Section 427 is clear exception to the general rule and nothing but an enabling provisions by which an opportunity can be awarded to the accused to reform himself and, therefore, the provisions of Section 427 of Criminal Procedure Code comes into operation only on certain conditions. Section 427 of Criminal Procedure Code reads as under:

> **“427. Sentence on offender already sentenced for another offence.** - (1) When a person already undergoing a sentence of imprisonment is sentenced on a subsequent conviction to imprisonment or imprisonment for life, such imprisonment or imprisonment for life shall commence at the expiration of the imprisonment to which he has been previously sentenced, unless the Court directs that the subsequent sentence shall run concurrently with

such previous sentence:

Provided that where a person who has been sentenced to imprisonment by an order under section 122 in default of furnishing security is, whilst undergoing such sentence, sentenced to imprisonment for an offence committed prior to the making of such order, the latter sentence shall commence immediately.

(2) When a person already undergoing a sentence of imprisonment for life is sentenced on a subsequent conviction to imprisonment for a term or imprisonment for life, the subsequent sentence shall run concurrently with such previous sentence."

12. From bare reading of the provisions what is strikingly evident is, certain conditions must be

present to attract Section 427 of the Criminal Procedure Code. These conditions can be set out as under:

1. Accused must be already undergoing a sentence of imprisonment.
2. Such accused must be sentenced on a subsequent conviction to imprisonment that to say, while he is already undergoing imprisonment on previous conviction.

13. Only on fulfilling these two conditions, the provision of Section 427 is attracted. The phraseology used “when a person already undergoing a sentence of imprisonment” necessarily suggest that when subsequent conviction to imprisonment is awarded, the accused was undergoing a sentence of imprisonment. Meaning thereby that there must be a previous conviction and sentence, in pursuance of which the accused was undergoing imprisonment

and that such accused on subsequent event, if convicted and sentenced to imprisonment in different case, can be given benefit of Section 427 of the Code of Criminal Procedure. The phraseology, therefore, used “a person already undergoing sentence of imprisonment” must be strictly construed and any loose interpretation in this respect would amount to amend the statute. By no stretch of reasoning, the convictions and sentences awarded, simultaneously, on the same day in different cases, could be said to be a previous conviction in which a person already undergoing a sentence of imprisonment. The interpretation, therefore, in this respect advanced by learned senior counsel for the applicant cannot be accepted that when a person is convicted on the same day in different cases, first pronouncement of conviction and sentence, would be a previous conviction and pronouncement of judgment in subsequent cases in which judgments of

convictions are pronounced on the same day. This is so because such an interpretation would be antagonistically contrary to the essence of the provision of Section 427 which starts with the phrase that “when a person already undergoing a sentence of imprisonment”. Therefore, when in this case, in all eight cases, the convictions and sentences are inflicted upon the applicant on the same day may be one after another, the situation would not conform with the phraseology that the accused was already undergoing a sentence of imprisonment. The learned senior counsel of the applicant, in this respect, draw my attention to a decision of the Judicial Commissioner's Court of Goa, Daman and Diu, in the matter of **Cruz Fernandes Vs. The State,** as reported in **1970 Cri.L.J. 96**, **(Supra)** wherein the accused was sentenced on same day to two separate terms of imprisonment in two separate trials, the Court directed that those two sentences should be directed to run concurrently and such directions

of learned Judicial Magistrate was held proper. With all due respect to the ratio laid down in this decision, I may humbly defer with the view taken by Goa, Daman and Diu J. C.'s Court in the said decision for the simple reason that such a course, according to my humble opinion is not permitted by provisions of Section 427 of the Criminal Procedure Code where pre-condition for applying the provision is, an accused person must be already undergoing a sentence of imprisonment and he is convicted and sentenced to subsequent trial. Employment of such phraseology would not leave any room for a doubt that the provision of Section 427 of the Criminal Procedure Code does not include convictions and sentences of imprisonment inflicted simultaneously on the same day, might those decisions have been pronounced one after the other. In all other authorities relied upon by the learned senior counsel for the applicant of various High Courts, these pre-conditions were very well existed and on those

circumstances by various High Courts, it has been held that under inherent powers of the High Courts, it can be examined whether discretion under Section 427 is properly and lawfully used or not used by the concerned Judicial Magistrate. Those decisions, therefore, would not be helpful to the applicant. So far as the decision of the Supreme Court is concerned, the same is in respect of exercising of powers in favour of the accused under Section 482 of the Criminal Procedure Code, in the circumstances, when main accused is discharged and such discharge has attained finality. This decision would also not be applicable to the facts of the present case.

14. Having examined one more aspect of the case, while exercising discretion under Section 427 of the Criminal Procedure Code, it is necessary for the Judicial Magistrate concerned to see that the previous conviction and sentence has some nexus with the subsequent conviction and sentence.

Necessary it is here to mention and refer to the decision of the Apex Court in the matter of **Mohd. Akhtar Hussain alias Ibrahim Ahmed Bhatti Vs. Assistant Collector of Customs (Prevention), Ahmedabad and others,** as reported in **AIR 1988 S.C. 2143**. In the said decision, when previous conviction was under the Gold Control Act and the subsequent conviction was under the Customs Act and when the Court below refused to exercise discretion under Section 427, the Apex Court held that when two offences were different the direction to run the sentences concurrently was out of question. In para-10 of the aforesaid decision, the Apex Court observed as under:

> "**10**. The basic rule of thumb over the years has been the so-called single transaction rule for concurrent sentences. If a given transaction constitutes two offences under two enactments generally, it is wrong to have consecutive sentences. It is

> proper and legitimate to have concurrent sentences. But this rule has no application if the transaction relating to offences is not the same or the facts constituting the two offences are quite different.”

15. It is clear from the above observations of the Apex Court that even if the case falls within the scope of Section 427, concurrently running of sentence cannot be directed if the transaction relating to offences is not the same or the facts constituting two offences are quite different. In the present eight criminal cases, in which the applicant is convicted and sentenced, though the cases are of same type meaning thereby to say that same type of offences are alleged against him but the facts of each case are all together different. Therefore, while exercising discretion under Section 427, the Judicial Magistrate must keep this also in mind. True that the co-accused

might have been given benefit of Section 427 by the learned Judicial Magistrate predecessor to the Judicial Magistrate who pronounced the judgments impugned in this application, but that would not entitle the applicant to claim parity with the said accused. When such a course is not permissible by law. While examining independently, the present applicant is not entitled to benefit of discretion under Section 427 of Criminal Procedure Code. It is not within the scope of this application to consider whether the benefit given to the co-accused is legally valid or not and hence it is not necessary to dwell upon that any further, and it would be for any party to raise grievance if so permitted by law.

16. In view of the above, this application stands dismissed. Rule is discharged.

Sd/-
[J. R. VORA,J.]

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